



FEDERAL TRADE COMMISSION

[File No. 212 3140]

Harley-Davidson Motor Company Group, LLC; Analysis of Proposed Consent

Order to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement; request for comment.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices. The attached Analysis of Proposed Consent Order to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order – embodied in the consent agreement – that would settle these allegations.

DATES: Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

ADDRESSES: Interested parties may file comments online or on paper by following the instructions in the Request for Comment part of the **SUPPLEMENTARY**

INFORMATION section below. Please write “Harley-Davidson Motor Company Group, LLC; File No. 212 3140” on your comment and file your comment online at

<https://www.regulations.gov> by following the instructions on the web-based form. If you prefer to file your comment on paper, mail your comment to the following address:

Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC-5610 (Annex D), Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Melissa Dickey (202-326-2662), Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR § 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained at <https://www.ftc.gov/news-events/commission-actions>.

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. Write “Harley-Davidson Motor Company Group, LLC; File No. 212 3140” on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the <https://www.regulations.gov> website.

Because of heightened security screening, postal mail addressed to the Commission will be subject to delay. We strongly encourage you to submit your comments online through the <https://www.regulations.gov> website.

If you prefer to file your comment on paper, write “Harley-Davidson Motor Company Group, LLC; File No. 212 3140” on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Suite CC-5610 (Annex D), Washington, DC 20580.

Because your comment will be placed on the publicly accessible website at <https://www.regulations.gov>, you are solely responsible for making sure your comment does not include any sensitive or confidential information. In particular, your comment should not include sensitive personal information, such as your or anyone else’s Social

Security number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. You are also solely responsible for making sure your comment does not include sensitive health information, such as medical records or other individually identifiable health information. In addition, your comment should not include any "trade secret or any commercial or financial information which . . . is privileged or confidential"—as provided by Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2)—including competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled "Confidential," and must comply with FTC Rule 4.9(c). In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c). Your comment will be kept confidential only if the General Counsel grants your request in accordance with the law and the public interest. Once your comment has been posted on the <https://www.regulations.gov> website—as legally required by FTC Rule 4.9(b)—we cannot redact or remove your comment from that website, unless you submit a confidentiality request that meets the requirements for such treatment under FTC Rule 4.9(c), and the General Counsel grants that request.

Visit the FTC Website at <http://www.ftc.gov> to read this document and the news release describing the proposed settlement. The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding, as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before [INSERT DATE 30 DAYS AFTER DATE

OF PUBLICATION IN THE *FEDERAL REGISTER*]. For information on the Commission's privacy policy, including routine uses permitted by the Privacy Act, see <https://www.ftc.gov/site-information/privacy-policy>.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission (the "Commission") has accepted, subject to final approval, an agreement containing a consent order from Harley-Davidson Motor Company Group, LLC ("Respondent" or "Harley-Davidson").

The proposed consent order ("Proposed Order") has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement, along with any comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the Proposed Order.

This matter involves the warranty that Harley-Davidson offers to purchasers of its motorcycles. According to the Commission's complaint, Harley-Davidson's warranty is conditioned on purchasers using authorized Harley-Davidson parts and accessories; otherwise, the warranty is void. In addition, the complaint alleges that Harley-Davidson's warranty does not contain a clear explanation of all material terms; instead, the warranty informs purchasers that they must ask a Harley-Davidson dealer to get a full explanation of what is covered by the warranty, and what is not.

Based on the foregoing, the Commission alleges that Respondent violated the Magnuson-Moss Warranty Act and regulations promulgated thereunder, including the Rule Governing Disclosure of Written Consumer Product Warranty Terms and Conditions, and engaged in deceptive acts or practices in violation of Section 5(a) of the FTC Act.

The Proposed Order contains injunctive provisions addressing the alleged deceptive conduct. Section I prohibits Respondent from (1) expressly or implicitly conditioning a warranty on a consumer's use of any article or service which is identified by brand, trade, or corporate name, unless the article or service is offered for free or the Commission has issued a waiver to the company, or from otherwise violating the Warranty Act or the Rules promulgated thereunder; and (2) failing to disclose all warranty terms in a single document that uses simple and readily understood terms to describe the warranty to consumers. Section I permits Respondent to not modify its existing calendar year 2022 warranty documents, provided that Respondent provides all purchasers of its calendar year 2022 motorcycles with a copy of the updated warranty and a customer notice and requires its authorized dealers to maintain copies of these records.

Section II prohibits Respondent from representing to consumers, expressly or by implication, (a) that its warranties will be void if they use third-party parts or services or if they modify or alter the product without authorization, or (b) as a condition of warranty coverage or in the written warranty, that consumers should only use branded parts or have their product repaired, altered or serviced by authorized service providers. Respondent will be permitted to exclude from its warranty coverage (1) damages caused by the use of unauthorized parts or services, the use of its vehicles for racing or competitions or the installation of parts designed for unauthorized uses of the vehicle, such as trailer hitches, and (2) all functional defects of powertrain components for any Harley-Davidson motorcycle registered in the United States if the vehicle was tuned using a tuning product not covered by a California Air and Resources Board Executive Order or that was otherwise approved by the Environmental Protection Agency, or if Harley-Davidson or any authorized Harley-Davidson dealer has any information to show that the vehicle was tuned using a tuning product not covered by a California Air and Resources Board Executive Order or that was otherwise approved by the Environmental Protection Agency.

Section II also requires Respondent to include language in the warranty that affirmatively notifies consumers of their rights to use third-party services and parts under the Magnuson-Moss Warranty Act and enjoins Respondent from misrepresenting any material facts to consumers about the warranty.

Sections III and IV require Respondent to inform its customers and authorized dealers and service providers that its warranty has been updated, and that the updated warranty is not conditioned on the use of authorized parts or services. Respondent must clearly and conspicuously post and keep on its website the notice and its updated warranty terms, and it must submit reports regarding its notification program. Sections V through VII of the Proposed Order are reporting and compliance provisions, which include recordkeeping requirements and provisions requiring Respondent to provide information or documents necessary for the Commission to monitor compliance with the Proposed Order. Section IX states that the Proposed Order will remain in effect for twenty (20) years, with certain exceptions.

The purpose of this analysis is to aid public comment on the Proposed Order. It is not intended to constitute an official interpretation of the complaint or Proposed Order, or to modify in any way the Proposed Order's terms.

By direction of the Commission.

April J. Tabor,

Secretary

Statement of Chair Lina M. Khan Joined by Commissioner Rebecca Kelly Slaughter

Today the Commission announced actions settling charges that Harley-Davidson, LLC and MWE Investments, LLC ("Westinghouse") have engaged in unlawful repair restrictions. As stated in the complaints, the Commission charged Harley-Davidson, which manufactures motorcycles and related equipment, and Westinghouse, which makes and sells outdoor generators and related products, with unlawfully conditioning their

warranties on the use of authorized parts in violation of both the Magnuson-Moss Warranty Act and the FTC Act. The Commission also alleged that Harley-Davidson failed to provide a clear description of warranty terms in a single document, a violation of the Disclosure Rule.

The consent orders obtained in these matters bar both manufacturers from continuing the unlawful tying of their warranties to the use of authorized service or parts and prohibit them from misrepresenting any material facts about the warranty. Importantly, the firms are also required to note clearly and conspicuously in public statements that using third-party parts or repair services will not void the warranty. They must also provide customers with clear notice alerting them of the change.

In July 2021, the Commission unanimously adopted a policy statement that committed the agency to prioritizing enforcement actions tackling unlawful repair restrictions.¹ Today's enforcement actions—the first addressing unlawful repair restrictions since we adopted the policy statement—mark an important step forward, demonstrating our commitment to vigorously protecting Americans' right to repair. We are grateful to the Bureau of Consumer Protection staff for their excellent work driving this effort forward.

Illegal repair restrictions can significantly raise costs for consumers, stifle innovation, close off business opportunity for independent repair shops, create unnecessary electronic waste, delay timely repairs, and undermine resiliency—harms that

¹ Press Release, Fed. Trade Comm'n, FTC to Ramp Up Law Enforcement Against Illegal Repair Restrictions (July 21, 2021), <https://www.ftc.gov/news-events/news/press-releases/2021/07/ftc-ramp-law-enforcement-against-illegalrepair-restrictions>. This policy statement followed a July 2019 workshop that the FTC held on unlawful repair restrictions and a May 2021 report documenting the types of repair restrictions that firms frequently impose and the various arguments criticizing and defending them. See Nixing the Fix: A Workshop on Repair Restrictions, FED. TRADE COMM'N (July 16, 2019), <https://www.ftc.gov/news-events/events/2019/07/nixing-fix-workshop-repairrestrictions>; Press Release, Fed. Trad Comm'n, FTC Report to Congress Examines Anti-Competitive Repair Restrictions, Recommends Ways to Expand Consumers' Repair Options (May 6, 2021), <https://www.ftc.gov/newsevents/news/press-releases/2021/05/ftc-report-congress-examines-anti-competitive-repair-restrictions-recommendsways-expand-consumers>.

can have an outsized impact on low-income communities in particular.² It is critical that unlawful repair restrictions continue to be a key area of focus for the Commission and that we continue to use all of our tools and authorities to root out these illegal practices.

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² Remarks of Chair Lina M. Khan Regarding the Proposed Policy Statement on Right to Repair, at 1 (July 21, 2021), <https://www.ftc.gov/legal-library/browse/cases-proceedings/public-statements/remarks-chair-lina-m-khanregarding-proposed-policy-statement-right-repair>; FED. TRADE COMM’N, NIXING THE FIX: AN FTC REPORT TO CONGRESS ON REPAIR RESTRICTIONS, at 4-5, 9-15 (2021).